

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 29 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAIME MARTINEZ-HUERTAS, A.K.A.
Javier Paz,

Defendant - Appellant.

No. 05-30462

D.C. No. CR-05-00030-SEH

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Argued and Submitted June 8, 2006
Seattle, Washington

Before: THOMPSON, TASHIMA, and CALLAHAN, Circuit Judges.

Jaime Martinez-Huertas challenges his conviction for reentry of a removed alien in violation of 8 U.S.C. § 1326(a). He argues that the district court should have granted his motion to suppress evidence because a border patrol agent allegedly detained him without reasonable suspicion. We review this claim de

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

novo, *United States v. Meek*, 366 F.3d 705, 711 (9th Cir. 2004), and affirm the district court.

When the passenger train on which Martinez-Huertas was traveling stopped for refueling in Havre, Montana, he chose to stay aboard. During that stop, a border patrol agent boarded the train, approached Martinez-Huertas, and posed questions aimed at ascertaining his alienage. Martinez-Huertas answered the questions and was arrested for being an illegal alien. Although he had provided a false name, a fingerprint analysis at the border patrol station revealed Martinez-Huertas's identity, and also that he was a deported alien with a criminal record.

Martinez-Huertas seeks to suppress the evidence of his identity, arguing that the border patrol agent egregiously violated his constitutional rights by questioning him about a crime without reasonable suspicion. We have clearly held that identity evidence is never suppressible, even if there were a constitutional violation leading to its discovery. *See United States v. Del Toro Gudino*, 376 F.3d 997, 1001 (9th Cir. 2004). Moreover, here there was no such violation. The border patrol agent's approach and questioning of Martinez-Huertas did not constitute an investigatory stop, and reasonable suspicion was unnecessary. *See United States v. Woods*, 720 F.2d 1022, 1026 (9th Cir. 1983).

Martinez-Huertas also challenges his sentence of imprisonment for seventy-eight months. He argues that his sentence is unreasonable in part because other jurisdictions (specifically jurisdictions with a “fast track” program) are more lenient to similarly situated illegal immigrants. We recently rejected this argument in *United States v. Marcial-Santiago*, 447 F.3d 715, 718–19 (9th Cir. 2006). In arriving at Martinez-Huertas’s sentence, the district court engaged in the analysis prescribed by the Supreme Court in *United States v. Booker*, 543 U.S. 220, 261–62 (2005). The sentence is not unreasonable.

AFFIRMED.